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No. 252.

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IN THE
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Supreme Court of the United States.

No. 252.

October Term, 1898.

JOHN W. COLLIER, Administrator of JAMES E. RANCK,
deceased, Appellant,

vs.

THE UNITED STATES and APACHE INDIANS.

Appeal from the Court of Claims.

A. H. GARLAND,

HEBER J. MAY,

Attorneys for Appellants.

MOGILL & WALLACE, LAW PRINTERS, Washington, D. C.

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Supreme Court of the United States.

OCTOBER TERM, 1898.

JOHN W. COLLIER, Administrator of
James E. Ranck, deceased, *Appellant*,

vs.

THE UNITED STATES AND APACHE INDIANS.

} No. 252.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT.

This is an Indian depredation claim. The depredation was committed, according to the allegations of the petition, by Apache Indians on the Rio Azul, near the Texas and New Mexico boundary line, on or about March 2, 1869. A claim for compensation for the property taken, cattle and horses, was duly filed in the Interior Department on April 17, 1877. The claim, as presented, amounted to \$52,930, and was pending there at the time of the passage of the act of Congress of March 3, 1891 (26 Stat., 851), which provides "for the adjudication and payment of claims arising from Indian depredations." The claim was then transferred to the Court of Claims. (Rec., p. 1.)

Considerable testimony was taken for the claimant, but the result of it is the meagre finding of the fact set out on the top of page 9 of the Record. All the other findings consist of documents.

The claim was referred, on May 22, 1877, to the United States Indian Agent at San Carlos Agency, Arizona Territory, who reported that the depredation had not been committed by the Southern Apache Indians, inasmuch as those Indians were confining their depredations to Arizona, Western New Mexico, Sonora, and Chihuahua. He suggested that the Mescalero Indians may have committed the depredation. (Rec., p. 8.)

Subsequently, in the course of the proceedings in the Interior Department, the claim was in due course investigated by the United States Indian Agent for the Mescaleros, who convened a council of the head men, to whom the nature of the claim was explained, and the Indians interrogated individually, and each man disclaimed any knowledge of the depredation, both for himself and his band. *This is the only direct testimony in the Record*, and the agent was sufficiently impressed with its truthfulness to recommend the payment of the claim. (Rec., p. 8.)

The Court of Claims upon the documentary evidence set forth in the finding, which consists of general reports of army officers to the War Department, concluded that the depredation was committed by a band of Mescalero Apache Indians, who were not in amity with the United States, and dismissed the petition for want of jurisdiction. (Rec., pp. 3, 9.)

The Apache Indians were in amity with the United States at the time the depredation was committed by treaty and otherwise. (15 Stat., 585.)

The first document (Rec., pp. 3, 4) is an extract from a report of General Getty to the War Department, concerning the military operations in the district of New Mexico, ending June 30, 1869. The report has nothing whatever to do with this claim. The Mescalero Apaches are accused of committing depredations generally in the southern portions of New Mexico, and as far north as Santa Fé.

An extract from the report of the Commissioner of Indian Affairs of 1869, states that the Mescaleros roam over the southeast part of New Mexico, and have committed a number of depredations. The extract shows that these Indians were formerly peaceable, and should be placed on a reservation with *other Apaches*. (Rec., p. 4.)

Another extract from the report of the Commissioner of Indian Affairs for 1869 consists of a report of Lorenzo Labadi, United States Indian Agent. The agent refers to the Mescaleros as having been industrious while they were on their reservation, and says he has repeatedly recommended placing them on a reservation. He also says they expressed a desire for schools and missionaries, etc. He says the Mescaleros "may have resorted to depredations against the whites." (Rec., pp. 4, 5.)

A. G. Hennissee, Lieutenant and Indian Agent, also makes a report as to the condition of the Mescaleros, but admits his report is based on information received from

the late agent, Labadi, and the officers of the army stationed in the Territory. It appears from his report that the Mescaleros left their reservation to avoid serious difficulty with the Navajoes, who were on the same reservation. This agent makes no reference to depredations that were committed by these Indians. (Rec., pp. 5, 7.)

Indian Agent Clum admits the Southern Apaches were committing depredations. (Rec., p. 8.) It is also admitted that other Apaches joined them. (Rec., p. 4.)

The report of Agent Cowart shows the Mescaleros knew nothing about this depredation. (Rec., p. 8.)

The last paragraph of the finding shows something of the manner in which the depredation was committed. (Rec., p. 9.)

Upon the finding of facts two propositions are presented for discussion.

First. Are the documents in the finding, excepting the reports of Agent Clum and Agent Cowart (Rec., p. 8), competent and relevant evidence for any purpose in the case?

Second. If the documents are competent and relevant as evidence, is the finding of fact sufficient to sustain the judgment of the Court of Claims dismissing the petition for want of jurisdiction?

BRIEF.

I.

Our contention is that the extracts from the reports in the finding of facts are not competent and relevant evidence. This objection does not apply, however, to the

reports of Clum and Cowart, which are immediately connected with the claim. (Rec., p. 8.) We are given only fragments of the reports of the military officers, which, of itself, is not a fair way to present the facts.

The provision in section 4 of the statute upon the subject of the competency of this class of evidence is as follows:

“ In considering the merits of claims presented to the court, any testimony, affidavits, reports of special agents, or other officers, and such other papers as are now on file in the departments or in the courts, relating to any such claims, shall be considered by the court as competent evidence, and such weight given thereto as, in its judgment, is right and proper.”
* * * (26 Stat., 853, ch. 538).

It is provided in section 11 of the act “ that all papers, reports, evidence, records, and proceedings now on file or of record in any of the departments or the office of the Secretary of the Senate, or the office of the Clerk of the House of Representatives, or certified copies of the same, relating to any claims authorized to be prosecuted under this act, shall be furnished to the court upon its order or at the request of the Attorney-General.” (26 Stat., 854, ch. 538.)

When sections 4 and 11 of the act are considered together it is evident that Congress did not intend to include in their terms such general reports as those of Gen. Getty, the Commissioner of Indian Affairs, or Major Moore. In order to bring the testimony, affidavits, reports of special agents or other officers, and other papers within the statute, they must have some *actual relation* to the claim.

If this is not true, why does the statute provide (par. 4) that such reports or other documents "*relating to any such claims* shall be considered by the court as competent evidence," etc.

And section 11 confirms the provision in section 4 by providing that such reports, etc., or certified copies thereof, "*relating to any claims authorized to be prosecuted under this act* shall be furnished," etc.

Some difficulty may be found in fixing the status of the word "relating" as used in the statute. If it is intended to fall within the legal fiction of "relation," then the reports of the officers in the findings, except those of Clum and Cowart, have no relevancy here, and are not competent evidence, inasmuch as they never had any connection directly with the Indian depredation claim in this case, and can not therefore relate back to it. The word does not fall within the other definitions of "relate" or "relating" so as to make the reports, etc., competent evidence, for the reason that the facts stated in such reports, etc., are not allied by connection or otherwise to the claim for which this suit is prosecuted; nor do the statements contained in the extracts from the reports of the officers to which we have made objection refer, relate, or pertain in any manner to the claim. In other words, the use of the words, "*relating to any such claims*," must obviously mean that such claims should be the substantial object or subject of the papers that may be used according to section 4 of the statute.

The contention here is that the provision of the statute limits the use of reports, etc., as evidence to those

having some actual connection with or relation to the claim under consideration.

II.

If the reports in the finding of facts are competent evidence under the statute, are they sufficient to sustain the conclusion of law and dismissal of the petition for want of jurisdiction by the Court of Claims?

For the purpose of showing there is no foundation for the finding that the Mescalero Apache Indians committed the depredation, we will condense all that appears against them in the extracts from the reports of the officers.

Gen. Getty says of these Indians :

" Fort Stanton, N. M., situated about 80 miles east of Fort Craig, on a tributary of the Rio Pecos, protects the settlements in its vicinity, and is a good point from which to send out scouting parties against the Mescalero Indians.

* * * * *

The great pests of the district have been the Mescalero Apaches, who infest all the southern portions of the Territory, and sometimes extend their operations in small parties as far north as Santa Fé.

They live almost entirely from the results of their thieving expeditions, are adventurous and cunning, and probably excel all other Indians in cruelty. The small size of their parties and the extremely mountainous and wild nature of the country render any successful pursuit a matter of great difficulty and frequently of impossibility.

The scouts mentioned in this report have been mainly directed against these Indians. They number some 450 men, women and children, but their

warriors are usually accompanied in their expeditions by a few Navajoes and Miembres and Mongollon Apaches."

The Commissioner of Indian Affairs says :

" Mescalero Apaches are reported to number 525, and roam over the southeast part of the Territory. (New Mexico.) Since their escape in 1866 from the Bosque Redondo reservation they have doubtless been guilty of a number of murders and depredations. Before this they were peaceable and friendly. Such is the mountainous character of their country that it is difficult for troops to find them, as it is said in July last a scouting force of 65 men, under an officer, passed through it, and only by accident was a party of seven Apaches discovered. It seems to be the general opinion that these Indians should have a reservation set apart for them near Fort Stanton, in their old home, upon which could also be placed other Apaches. The country contains an abundance of wood, water, and game, and is every way suitable."

The report of Indian Agent Labadi (Rec., pp. 4, 5), says it is claimed the Mescalero Apaches have been committing depredations in the vicinity of Fort Stanton. (Fort Stanton is about 100 miles northwest of the point on Black River where this depredation was committed.) Labadi does not, it will be observed from his report, give the Mescaleros the bad name that is given to them by General Getty. Nor does the Commissioner of Indian Affairs. (Rec., p. 4.)

Indian Agent Hennissee (Rec., pp. 5, 7) says the Mescaleros sometimes made raids very near Fort Stanton. He pleads for means to place these Indians on a reserva-

tion, where they have expressed a desire to go and live in peace.

Brevet Major Moore makes no reference to the Mescalero Apaches whatever. (Rec., p. 7.)

We have set out above all that is material in fixing the responsibility for the depredation on the Mescalero Indians. The statements in the reports are too general to be evidence against the claimant in this case. Not a specific depredation is pointed out as having been committed by the Mescaleros. The finding is a clear make-shift as an escape from liability on the part of the Apache Indians or the United States.

The Apache Indians, as distinguished from the Mescaleros, were committing depredations at the time along the Rio Grande River, and evidently extending their incursions across that river to the northward. (Rec., p. 3.) These Indians, so far as distance is concerned, could have been charged, according to the finding of facts, with having committed the Ranck depredation upon a presumption as well founded as the presumption made by the Court of Claims against the Mescaleros.

General Getty also states, in his report (Rec., p. 3), that "sixty-two scouts, mostly from the southern posts and operating against the Apache Indians, have been ordered since June 30, 1868."

The Southern Apaches (Rec., p. 8) were committing depredations in Chihuahua and Western New Mexico, and were nearly, if not quite, as close to the place of the Ranck depredation as the Mescaleros, who committed depredations in the vicinity of Fort Stanton. (Rec., p. 4.)

It is contended, on behalf of the appellant, that the conclusion of law of the Court of Claims rests absolutely upon a presumption that the Mescalero Indians committed the depredation, and that presumption itself rests upon a finding of fact that is not sufficient to sustain the presumption or the conclusion of law. The facts so found or stated are not sufficient to support the final judgment of the Court of Claims dismissing the petition of the claimant.

This court will inquire whether the judgment below is supported by the facts found.

Chase *v.* United States, 155 U. S., 489, 500.

Respectfully submitted.

A. H. GARLAND,

HEBER J. MAY,

Attorneys for Appellant.